IN THE HIGH COURT OF KIRIBATI 2019

MISCELLANEOUS APPLICATION NO. 111 OF 2019
(ARISING FROM HIGH COURT CIVIL REVIEW 23 OF 2019)

	[TAUBO UEAITITI	
	[FOR ISSUES OF TABURATERORO TANGIMATE	APPLICANTS
	[	
BETWEEN	[AND	
	[	
	[MAREWENUEA TOAURIRI	
	[WITH BROTHERS AND SISTERS	1ST RESPONDENTS
	[	
	[AND	
	[	
	[TONGANIBEIA RURUTAAKE	
	[WITH BROTHERS AND SISTERS	2ND RESPONDENTS

Before: The Hon Chief Justice Sir John Muria

29 October 2019

Ms Taaira Timeon for Applicants
Ms Taoing Taoaba for Respondents

JUDGMENT

Muria, CJ: By their application filed on 8 August 2019, the applicants seek an extension of time to apply for leave to issue certiorari proceedings against the respondents challenging the decisions of the Magistrates' Court in Case Numbers 428/48, 459/90 and Betlan 640/15. Needless to say, the respondents opposed the application.

Brief background

2. The land concerned in this application is Tabokuria at Bonriki. This is one of the lands dealt with by the Land Commission in 1948.

3. In case 428/48 the Land Commission dealt with a number of lands one of which was Tabokuria. The Land Commission decided that the land Tabokuria be registered in the name of Ioniman. No appeal was ever taken against the Court's decision in Case 428/48.

4. Subsequently, cases BA 459/90, Betlan 640/15 and 418/18 were also dealt with by the Magistrates' Court. In all those cases, the respondents' titles to the land were confirmed by the Magistrates' Courts.

Ground for seeking extension of time

5. The reasons for the delay in challenging the decision of the Court in Case Number 428/48 were stated in the applicants' supporting affidavit filed by Taubo Ueaititi. In paragraphs 8 and 12 of his affidavit, Taubo Ueaititi set out the reasons for the delay in challenging the decision of the Court in Case 428/48.

6. In paragraph 8 of his affidavit Taubo Ueaititi claims that the reason for the delay was due to the fact that he and his family members were scattered throughout Kiribati, such as in Marakei and Kiritimati Island where he and his family live. Other members of the family live in the Marshall Islands, Rabi in Fiji and in America. It was in 2010 that the applicants' families began their search for the lands belonging to their ancestors. Paragraph 12 of Taubo Ueaititi's affidavit repeats the same claim for the delay.

7. The other reason given for the delay is a claim that the Government prohibited landowners to search for land documents of their ancestors from the National Archives. Consequently, the applicants claim that the prohibition prevented them from ascertaining whether other people were living and registered on the land under the name of Tawanga.

Decision

8. The principles governing the exercise of the Court's discretion in an application for extension of time have been settled by our Courts in Kiribati. I do not need to list them down here. However I need only mention a few of them.

9. The question of extension of time is always a matter for the discretion of the Court. The burden of establishing "**good and acceptable**" reason for the delay always lies on the shoulder of the applicant who seeks the indulgence of the Court for a grant of extension of time. This two-tier explanation is essential, especially in cases where the magnitude of the delay is so significant, such as in the present case where the delay is 71 years.

10. In *Enari –v- Matata* [2005] KICA 18; Land Appeal 02 of 2005 (8 August 2005), an extension of time sought after 15 years' delay was refused by the Court, together with the fact that the appellant was present in Court when the original decision was given. In *Batee –v- Trustee for Jehova's Witness Church* [2006] KICA 17; Land Appeal 05 of 2005 (26 July 2006), the delay was three and a half years with no acceptable explanation. Extension of time to appeal was refused.

11. The case of *Tabora –v- Uruatarawa* [2009] KICA 9; Civil Appeal 04 of 2009 (26 August 2009) was an unusual one. The delay was 17 years. The Court of Appeal granted extension of time to bring certiorari proceedings despite the 17

years delay. The determining factor was the invalidity of the original title which the respondent was incapable of passing on to the second respondent.

12. The Court in **Tabora** sets out the general principles to assist the Court when considering an application for extension of time. The Court stated as follows:

> **"Normally a delay of 17 years would be fatal to an application of this kind. However the magnitude of the delay is only one of the relevant factors. Others include the nature of the original invalidity which is now under challenge, the date on which the applicant first heard of the decision to be challenged, the steps taken by the applicant thereafter, the extent to which the delay may be attributable to lawyers, and the extent to which innocent third parties have taken steps in reliance upon the original decision before being advised of the challenge".**

13. This Court also, in *Eritane –v- Rubeia & Turabu* [2011] KIHC 28; Civil Case 118 of 2010 (7 June 2011), considered that a 10 years delay was fatal to the applicant's request for extension of time to apply for leave to issue certiorari proceedings. The failure to exercise statutory right of appeal since the applicant was a party to the case and was present at the original hearing, added to the formidable task faced by the applicant.

14. Applying the principles stated in the cases referred to the present case, I find that the magnitude of the delays of 71 years from the original decision in case number 428/48, a delay of 29 years from case Number 459/90, and four years from Case Betlan 640/15, are quite substantial. The Court cannot simply brush aside the delays in this case.

15. The main reason advanced as justification for the delay was that the family members of the applicants were scattered throughout Kiribati and some were abroad in the Marshall Islands, Fiji and America. It is not clear which of the family members lived in the Marshall Islands, America and Fiji. But on the evidence of Taubo Ueaititi, those living in Kiribati came together in 2010 in Tarawa and had meetings to ascertain their lands. Nothing else was done by the applicants following their meeting. Then in 2013, they visited the National Archives to do some research over their land. In 2016 they saw "**some people**" residing on the land. It was in August 1019 that they decided to bring this application to Court.

16. Then there had been no challenge to the 1948 decision. The decisions of the Court in subsequent cases, also have not been challenged by way of appeal or otherwise. Further, the applicants knew that their forefathers gave the land to the respondents, as stated in paragraph 9 of Taubo's affidavit which says:

> **"9. We all know that there were lands belonging to Tawanga and this story came to our knowledge within our family circle passed on from our fore-fathers and to us".**

17. In the Court's view, it is impossible to accept the suggestion that the applicants did not know about the Court's decisions concerning the land Tabokuria. They knew all along about the land Tabokuria being given to the respondent by their forefathers. There is in the Court's view no acceptable explanation from the applicant about the delay in taking steps to challenge the respondent's title to the land Tabokuria.

18. For 71 years, the respondents have undisturbed titles, possession and use of the land Tabokuria. Even with the overriding requirement to do what is just and equitable, it would not be right to allow the respondent's right to the land to be disturbed after 71 years. There is no suggestion in this case that the original

title given to the respondents was invalid in any way nor is there any suggestion that fraud was involved when the land was transferred to Ioniman 71 years ago. The applicants have not raised any of these.

19. Thus, the magnitude of the delay, the lack of acceptable reasons for the delay and the prejudice would be caused to the respondents in their combination present a formidable difficulties on the applicants to convince the Court to grant them an extension of time to apply for leave to issue certiorari proceedings in this case.

20. The application for extension of time is refused.

Dated the 8th day of November 2019

HIGH COURT OF KIRIBATI
TE BOTI AE E RIETATA I KIRIBATI

SIR JOHN MURIA
Chief Justice